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In the [illegible] of the United States

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D[illegible] ton [illegible] and [illegible], Petitioners

v.

Claude [illegible], Secretary of Agriculture of the United States, and Marvin Jones, War Food [illegible] of the United States

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

[illegible] FOR THE RESPONDENTS

INDEX

CITATIONS

Cases—Continued.

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 211

DELBERT O. STARK, A. F. STRATTON, A. R. DENTON, G. STEBBINS AND F. WALSH, PETITIONERS

v.

CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE OF THE UNITED STATES, AND MARVIN JONES, WAR FOOD ADMINISTRATOR OF THE UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

BRIEF FOR THE RESPONDENTS

OPINION BELOW

The district court did not render an opinion. The opinion of the United States Court of Appeals for the District of Columbia (R. 67–73) is reported in 136 F. (2d) 786.

JURISDICTION

The judgment of the court below was entered on June 14, 1943 (R. 73). Petition for certiorari was filed on July 29, 1943, and was allowed on October

11, 1943 (R. 75). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C., sec. 347).

QUESTION PRESENTED

Whether milk producers have standing to enjoin the Secretary of Agriculture from carrying out certain provisions of an order issued by him under the Agricultural Marketing Agreement Act of 1937 where the basis of the suit is that provisions of the order asserted not to be authorized by the statute reduce the minimum prices to which the producers would otherwise be entitled under the terms of the order.[1]

STATUTE AND ADMINISTRATIVE REGULATION INVOLVED

The statute involved is the Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 7 U. S. C., sec. 601 *et seq.*, which reenacted and amended the Agricultural Adjustment Act as amended (48 Stat. 31; 48 Stat. 672; 49 Stat. 750). An annotated compilation of the Agricultural Marketing Agreement Act of 1937 is contained in the record (R. 31–49). The administrative regulation involved is an order issued under said Act

[1] Petitioners' brief does not present or discuss a further question presented in the petition for certiorari—namely, whether the statute authorizes the Secretary of Agriculture to make the payments to cooperative associations provided for by Section 904.9 of the Secretary's order. This question will therefore not be argued herein. Cf. second paragraph of note 5, p. 8, *infra*.

by the Secretary of Agriculture on July 28, 1941 (6 F. R. 3762), and set forth in full in the record (R. 51–65).

STATEMENT

Each of the five petitioners is a milk producer engaged in selling milk to handlers who sell and distribute milk in the Greater Boston Marketing Area and who, as such handlers, are subject to an order issued by the Secretary of Agriculture on July 28, 1941 (referred to herein as Order No. 4), regulating the handling of milk in the Boston area. Petitioners in this action, filed in the United States District Court for the District of Columbia against the respondent Wickard, Secretary of Agriculture, attack the validity of Section 904.9 of Order No. 4, which authorizes the Market Administrator[2] to make certain payments to all cooperative associations of producers which the Secretary of Agriculture has certified as eligible for such payments (R. 11). They also attack the validity of Section 904.7 (b) (5) of the order, which directs the Market Administrator to deduct these payments to cooperatives in making his computation of the minimum uniform (i. e., blended) price which handlers are required to pay to producers (*ibid.*). The relief which they prayed was that the Secretary of Agriculture be enjoined from certifying the qualification of any cooperative

[2] Order No. 4 is administered by a Market Administrator selected by the Secretary of Agriculture (Sec. 904.2, R. 53).

association under Section 904.9 and that Sections 904.9 (a)–(d) and 904.7 (b) (5) of the order be declared illegal and void (R. 12). Upon motion of petitioners, this Court joined Marvin Jones, War Food Administrator of the United States, as a party respondent.

Petitioners' bill of complaint alleges that none of them is a member of a cooperative association eligible to receive the payments authorized by Section 904.9 (R. 7); that the Market Administrator, in computing the uniform price payable by handlers to producers for milk delivered in August 1941, deducted $15,575.31 on account of payments made to cooperatives pursuant to Section 904.9 (R. 9); that similar payments to cooperatives and similar deductions in the computation of the uniform price will be made in succeeding months (R. 10); that such deductions will reduce the annual amounts paid to the individual petitioners by handlers by sums ranging from $10.50 to more than $39.00 and will reduce the total payments to similarly situated producers by more than $60,000 per year (R. 10, 11). Petitioners allege that their suit is brought for themselves and for the benefit of all other persons similarly situated (R. 6) and that the Agricultural Marketing Agreement Act of 1937 affords petitioners no method of administrative relief (R. 12).

Respondent in his answer set up as a first defense that the complaint fails to state a claim upon which relief can be granted (R. 20): The district

court, acting on petitioners' motion to dismiss respondent's first defense, entered judgment sustaining such defense and dismissing the complaint (R. 24). The Court of Appeals, in affirming the judgment below, held that petitioners did not have standing to obtain review of the Secretary's order (R. 67–73). This was the only question considered by the appellate court.

The relevant provisions of Order No. 4 may be summarized as follows:

By subparagraph (1) of Section 904.8 (b) each handler is required to pay to each producer other than a new producer "not less than" the uniform or blended price computed pursuant to Section 904.7 (b) of the order (R. 60).[3] The latter section (R. 59) provides that the Market Administrator shall compute a uniform price for each delivery period as follows: First, take the use-value of all milk sold or used by all handlers in the Boston marketing area, determining such use-value by adding together the total quantity of each class of milk so sold or used multiplied by the price applicable thereto as fixed by paragraphs (a), (b), and (c) of Section 904.4. Second, make certain specified additions to and deductions from the total use-value thus obtained. Third, divide the resulting sum by the total quantity of milk included in the computation.

[3] The minimum uniform price required to be paid is subject to the butterfat differentials set forth in Section 904.8 (e). These differentials, and also the provisions as to new producers found in Section 904.8 (b) (2), are not material here.

Although the order thus provides that each handler shall pay each producer (except new producers) the uniform price, under the terms of the order the actual cost to the handler of the milk which he uses or sells is not the uniform price multiplied by the number of hundredweight of milk handled. The actual cost of the milk to him is determined by adding together the sums obtained by multiplying the quantity of milk of each class by the "price" applicable thereto pursuant to paragraphs (a), (b), and (c) of Section 904.4. Section 904.8 (b) (3) provides that if this sum is more than the handler's payments to producers on the basis of the uniform price, he shall pay the difference to the Market Administrator; if it is less than such payments to producers, he shall receive the difference from the Market Administrator (R. 60). This balancing or adjustment account is sometimes referred to as the producer settlement fund.

Since the actual cost of milk to handlers is determined by the values or "prices" fixed by Section 904.4 and not by the uniform price computed under Section 904.7 (b), it follows that a lower uniform price (resulting from a deduction required to be made in computing such price) decreases the price producers are entitled to receive but does not decrease or increase the actual net amount which handlers are required to pay.

One of the deductions required to be made in computing uniform price (Sec. 904.7 (b) (5)) is the payments to be made to cooperatives pursuant

to Section 904.9. It is this deduction which the petitioners seek to have adjudged invalid. Section 904.9, which determines the amount of this deduction, provides that the Market Adminstrator shall make certain specified payments to any cooperative association of producers which the Secretary of Agriculture determines, after investigation, to be within the conditions or qualifications therein set forth (R. 62–63).[4] In order to become eligible for such payments the Secretary must find the cooperative, *inter alia*—

> to be systematically checking the weights and tests of milk delivered by its members to plants other than those which may be operated by itself; to guarantee payments to its producers; to be maintaining, either individually or in collaboration with other qualified cooperative associations, a competent staff for dealing with marketing problems and providing information to its members with whom close working relationships are constantly maintained; to be collaborating with other similar associations in activities incident to the maintenance and strengthening of collective bargaining

[4] Paragraph (a) of the section provides that cooperatives found to be eligible by the Secretary shall be "entitled to receive" the specified payment and paragraph (b) directs the Market Administrator to make the payments authorized by paragraph (a).

The payments specified are 1½¢ per hundredweight of milk marketed by the cooperative on behalf of its members and 5¢ per hundredweight on Class I milk received from producers at a plant operated under the exclusive control of member producers and sold to proprietary handlers (R. 63).

> by producers and the operation of a plant [*sic*] of uniform pricing of milk to handlers; * * *

The right to receive the authorized payments terminates if the Secretary finds, after opportunity for a hearing, that the cooperative has failed to meet any of the required conditions or to perform any of the specified functions.[5]

SUMMARY OF ARGUMENT

Petitioners, as producers of milk, bring this suit to enjoin the Secretary of Agriculture from carrying out provisions of a milk marketing order issued by the Secretary which require that certain payments to cooperative associations of producers be deducted in computing the uniform price which

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[5] Section 904.9 (c) requires each qualified cooperative to make reports to the Market Administrator, as requested by him, with respect to its use of such payments and the performance of any service or function set forth as the basis for such payment. Section 904.9 (d) provides that the Market Administrator shall suspend payments, upon request of the Secretary or upon his own initiative, whenever there is reason to believe that a beneficiary thereof is no longer qualified. (R. 63–64.)

Although the question of statutory authority is not argued by petitioners, it may be said that authority for the challenged provisions of the order is found in Section 8c (7) (D) of the statute (R. 37–38), which authorizes provisions "incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6), and (7) and necessary to effectuate the other provisions of such order." The payments in question are designed to compensate the cooperatives for services which they must perform in order to be eligible for such payments, which are beneficial to the market as a whole and contribute to the successful operation of the order, and which entail material expense.

the order establishes as the minimum price to be paid to producers by handlers. Petitioners have no standing to maintain this suit because the provisions of the order of which they complain violate no legal right of petitioners. It is well settled that "neither damage nor loss of income in consequence of the action of Government, which is not an invasion of recognized legal rights, is in itself a source of legal rights" giving standing to sue. *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 125.

A. The deduction on account of payments to cooperatives invades no property right of petitioners. They assert an equitable interest in the so-called producer settlement fund, but they, as producers, pay nothing into this fund and receive nothing from it. It is not a fund established or set apart for the benefit of producers. Its purpose and function are to equalize, as among handlers, certain obligations which the order imposes on them. It is clear that, under these circumstances, petitioners have no property interest, equitable or otherwise, in the producer settlement fund.

B. The deduction for payments to cooperatives invades no contract right of petitioners. No foundation for such a claim is laid by the pleadings. Petitioners do not allege that they have contracted with handlers for payment of a higher price than that received by them under the Secretary's order or that the order prevents the carrying out of any contract made by petitioners.

Petitioners' assertion of a violation of contract rights must fail for an additional reason. Neither the Secretary's order nor the statute under which it was issued interferes with petitioners' freedom to bargain with handlers for prices higher than the uniform price payable to them under the Secretary's marketing order. All that the order requires is that handlers pay to producers, as a *minimum*, the uniform price established by the order. Petitioners' lack of standing follows *a fortiori* from the cases holding that consumers may not bring suit to challenge minimum price orders (*City of Atlanta* v. *Ickes*, 308 U. S. 517); the legal inhibition against lower prices for consumers is not matched here by any legal inhibition against higher prices for producers.

C. There is nothing in the Agricultural Marketing Agreement Act of 1937 which supports petitioners' contention that this statute confers upon producers the right or privilege to obtain judicial review of the validity of marketing orders issued by the Secretary of Agriculture even though no legal right of the producer has been violated by the order which he attacks. Petitioners point to no provision of the statute capable of being construed as granting such a right and it is clear that the grant is not to be implied from the statute as a whole. In fact, examination of its provisions and general objectives compels the conclusion that Congress did not intend to confer upon every producer who might

be dissatisfied with the extent of the benefits which he derived from a marketing order of the Secretary the right to obtain judicial review of the Secretary's administrative action.

(1) The statute does provide for review of marketing orders, but it prescribes administrative review, followed by appeal to the courts from determinations made therein, and it confines the remedy to handlers. The handlers alone are subjected to legal obligations by the marketing orders. Congress, having explicitly dealt with the subject of judicial review, is not to be deemed to have intended to confer a further and different right of review, particularly since the review here sought would avoid the channeling through an administrative procedure which Congress evidently regarded as important.

(2) The statute makes the issuance of any marketing order dependent upon an exercise of administrative discretion not reviewable by the courts. Since Congress made the receipt of any benefits to producers a matter beyond judicial review, it can hardly have intended to subject to such review the extent of the benefits conferred under such marketing orders as the Secretary might issue.

(3) If the statute authorizes producers to attack the validity of the deduction here in question it must equally authorize producers to attack every provision of a marketing order which affects the uniform price payable to producers.

Thus the interpretation of the statute upon which petitioners must rely in order to find statutory support for the present suit would mean that producers were given by Congress the right to litigate the validity of all the major provisions of marketing orders. Such a construction, which would open wide the avenues of litigation, is not lightly to be inferred.

ARGUMENT

PETITIONERS HAVE NO STANDING TO MAINTAIN THE PRESENT SUIT

Petitioners do not question the settled rule that only a person whose "legal right" is violated by the unlawful conduct of another is entitled to maintain a suit.[6] As this Court said in *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 125, "neither damage nor loss of income in consequence of the action of Government, which is not an invasion of recognized legal rights, is in itself a source of legal rights" giving standing to sue.

Where the issue of the plaintiff's standing to sue is raised, the usual point in controversy, as here, is not the basic principle itself but whether the right asserted by the plaintiff is one which the law has protected against invasion. Concerning rights which are thus protected, this Court said in *Tennessee Power Co.* v. *Tennessee Valley Au-*

[6] *Tennessee Power Co.* v. *Tennessee Valley Authority*, 306 U. S. 118; *Alabama Power Co.* v. *Ickes*, 302 U. S. 464; *Massachusetts* v. *Mellon*, 262 U. S. 447.

thority, 306 U. S. 118, 137–138, that the right must be "one of property, one arising out of contract, one protected against tortious invasion, or one founded upon a statute which confers a privilege." The right, in other words, either must be within the class of those given protection at common law or it must be one based on an interest which has, by statute, been granted protection through court action.[7] Otherwise, the injury of which the plaintiff complains is *damnum absque injuria* and he is without standing to sue. *Alabama Power Co.* v. *Ickes,* 302 U. S. 464, 479.

Petitioners contend that they have standing to sue (1) because they have a definite equitable interest in the producer settlement fund which entitles them to prevent its wrongful dissipation, (2) because the Secretary's action constitutes an illegal interference with their contractual relations with handlers, and (3) because the statute confers upon producers a privilege, intended to be enforceable by court proceedings against the Secretary of Agriculture, to receive a price for their milk computed in accordance with the terms of the statute. Petitioners apparently also urge (Br. p. 18) that even if the right which they assert does not fall within any of these categories, it nevertheless at least savors a little of each.

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[7] See *Associated Industries, Inc.* v. *Ickes,* 134 F. (2d) 694, 700 (C. C. A. 2); order of Circuit Court of Appeals vacated by this Court on October 18, 1943, and cause remanded to determine proper disposition of case in view of expiration of the Bituminous Coal Act (No. 61, this Term).

Before considering these contentions, we emphasize the fact that neither the order nor the statute regulates in any respect the conduct of producers. Petitioners concede (Br. p. 36) that Order No. 4 does not require producers to do or not to do anything. Moreover, the statute itself under which the order is issued contains this limitation upon its regulatory scope. The Agricultural Marketing Agreement Act of 1937 provides that no order regulating the marketing of agricultural commodities "shall be applicable to any producer in his capacity as a producer" (Sec. 8c (13) (B), R. 40). The penal sanctions for violations of orders issued under Section 8c apply only to a "handler"[8] or an officer, agent, or employee thereof (Sec. 8c (14), R. 40). And just as only handlers are subject to regulation and sanctions, so only handlers are given an administrative review, followed by court review of the Secretary's determination therein, of orders issued under Section 8c (Sec. 8c (15), R. 41). Petitioners are therefore in the position of asking a court to set aside as invalid certain action taken by the Secretary of Agriculture in administering a statute when neither the action of which petitioners complain nor the statute itself imposes any restriction or requirement upon them.

[8] Handlers are defined as "processors, associations of producers, and others engaged in the handling of" certain specified agricultural commodities or products (Sec. 8c (1), R. 33).

It has been uniformly ruled that since neither the Agricultural Marketing Agreement Act of 1937 nor marketing orders issued under it requires producers to do, or to refrain from doing, anything, they have no standing to challenge the validity of such orders.[9]

A. PETITIONERS HAVE NO INTEREST IN THE PRODUCER SETTLEMENT FUND WHICH GIVES THEM STANDING TO MAINTAIN THIS SUIT

Petitioners contend that they are the real beneficiaries of the producer-settlement fund and that their property rights are therefore invaded if the Market Administrator makes payments out of this fund not authorized by statute. But we submit that petitioners wholly fail to show that they have any legally protected interest in the producer settlement fund. They pay nothing into it and receive nothing from it.

That producers receive nothing from the fund is easily demonstrated. The Market Administrator makes no payment to them. The producers are paid the uniform price by handlers and the amounts they receive are not determined by the amount which the handler to whom the milk is sold owes the fund or is entitled to receive from it. The complaint in the present case is that the pro-

[9] *Wallace* v. *Ganley*, 95 F. (2d) 364 (App. D. C.); *Massachusetts Farmers Defense Committee* v. *United States*, 26 F. Supp. 941, 943 (D. Mass.); *United States* v. *Superior Court*, 19 Calif. (2d) 189, 197–198 (1941).

ducer-settlement fund is depleted by an unauthorized deduction on account of certain payments to cooperatives. The lack of interest which producers have in the amount in the fund is further shown by the fact that if payments to cooperatives cease, the uniform price will be increased, and since handlers' payments to the settlement fund are determined by first crediting them with their payments of the uniform price, elimination of the deduction would *decrease* the amount paid into the fund.[10]. In other words, so far as the fund itself is concerned, the action of which petitioners complain augments rather than depletes the settlement fund.

Petitioners point out (Br. pp. 30–32) that in *H. P. Hood & Sons, Inc.* v. *United States*, 307 U. S. 588, the final decree of the district court, which this Court affirmed, directed that certain monies paid into the registry of the court during the period of litigation should be distributed to producers. The milk order in that case required handlers to deduct 2¢ per hundredweight from the uniform price payable to producers and to pay this amount to the Market Administrator to be

[10] The above statement is illustrated by the examples in petitioners' brief (pp. 15–17) of the operation of the producer settlement fund. Under the figures there employed, the amount paid into the fund is $45,000 if payments to cooperatives are deducted in computing uniform prices whereas the amount paid into the fund is only $37,500 if such deduction is eliminated.

expended by him through a separate fund established to defray the cost of furnishing market information to producers and for verifying weights, sampling and testing of milk purchased from producers. By an earlier court order the handlers were required, during the period of litigation, to pay the 2¢ into court rather than to the Market Administrator and he had therefore been unable currently to furnish the contemplated service to producers. Distribution among producers was the obvious and proper disposition to be made of money which had been withheld from them for the purpose of expenditure for the mutual benefit of all the producers, but which expenditure had been frustrated by the litigation.

The present producer settlement fund stands on an entirely different footing. It is not a sum definitely set apart or one earmarked for expenditure on behalf of all producers. Its major function is to equalize, as among handlers, the payments which each makes to producers based on uniform price and the actual net payment required of him by the order based on the use to which his milk is put. The difference in purpose and characteristics between the sum involved in the *Hood* case and the present producer settlement fund is further indicated by the fact that the 2¢ deduction in the *Hood* case was not a deduction in computing uniform price and therefore did not, under the terms of the milk order in that case, come into

the hands of the Market Administrator through the machinery of the producer settlement fund.[11]

The cases cited by petitioners do not support their claim of a property interest in the producer settlement fund. In *Santa Fe Pacific R. R. Co.* v. *Lane*, 244 U. S. 492, and in *Ickes* v. *Fox*, 300 U. S. 82, the plaintiffs had standing to sue because rights to property were threatened with injury by unauthorized acts of a public official.[12] *Mellon* v. *Orinoco Iron Co.*, 266 U. S. 121, decided only that where payment of money held in the Treasury of the United States calls for performance of a merely ministerial duty, one claiming to be the rightful payee may have that question determined in a suit to enforce the duty to pay. In *Z. & F. Assets Corp.* v. *Hall*, 311 U. S. 470, the plaintiffs' right to sue rested on the fact that they held awards entitling them to payment out of a fund established by an Act of Congress, and in such suit they could bring in issue the question whether unauthorized certifications of other awards were depleting the fund available for payment of their awards.[13]

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[11] Art. VII, sec. 2; Art. VIII, sec. 1, par. 3, of order involved in *Hood* case (Record in this Court in that case, vol. II, pp. 68–69, 70).

[12] In the former case the plaintiff was suing to protect its right to public lands granted to it by an Act of Congress. The plaintiffs in the latter case were suing to protect water rights which this Court described (p. 96) as "vested property rights."

[13] *Thompson* v. *Deal*, 92 F. (2d) 478 (App. D. C.), also cited by petitioners, involved the proper disposition of a fund

Petitioners cannot found their claim upon an "equitable interest" in the amount paid into the settlement fund by the handlers. The settlement fund is not maintained as a trust fund for the producers. And, as has been seen, so far from being dissipated by the action of the Secretary here complained of, the fund has been augmented by that action. From no point of view, therefore, has there been any breach of trust as against the petitioners. Their claim is, in truth, not one resting on misuse of trust funds, but one resting on an asserted miscalculation of the uniform minimum price to which they are entitled. Consequently the assertion of an equitable interest does not advance their case. They are remitted to the contention that they have standing to complain of the minimum price established, either because their contract rights have been invaded or because the statute itself confers on them an interest which is to be enforced by court action.

B. THERE IS NO ALLEGATION OR SHOWING THAT ANY CONTRACT RIGHT OF PETITIONERS HAS BEEN INVADED

The pleadings do not support the claim that the action of the respondent Secretary of Agriculture infringes upon any contract right of petitioners.

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which had come into existence solely by virtue of the operation of a statute subsequently adjudged unconstitutional. The case held that those whose money had been paid into the fund for the purchase of certificates which had no value apart from the provisions of the invalid statute were entitled to the return of their money.

With respect to their relations with the handlers to whom they sell, the bill of complaint merely alleges that each petitioner "sells" to handlers subject to Order No. 4 (R. 6). The complaint therefore does not allege contracts with these handlers; it does not allege contracts with them calling for payment of a price higher than the uniform price which they receive under the terms of Order No. 4; it does not allege that the order compels or threatens any breach of contract. So far as contract rights are concerned, no allegation sufficient to show invasion of a "legal right" is set forth. *Wallace* v. *Ganley,* 95 F. (2d) 364 (App. D. C.).

In addition, as petitioners concede (Br. p. 39), neither the statute nor the order bars petitioners from contracting with handlers for payment of a price higher than that which the order requires handlers to pay to producers. Petitioners assert that, under the conditions created by the order, no handler would be willing to pay a price above the minimum required by Order No. 4 and that the producers' freedom to contract for the payment of such a higher price is therefore illusory. There is nothing in the record to support these assumptions and the Government is informed that competitive conditions in the Boston market inducing the payment to producers of a price above the minimum required by the order are by no means unusual.

Indeed, petitioners' lack of standing follows *a fortiori* from the cases holding that *consumers* may not bring suit to challenge minimum prices fixed by public authority. *City of Atlanta* v. *Ickes*, 308 U. S. 517. Cf. *New York City* v. *New York Telephone Co.*, 261 U. S. 312, 316; *Smith* v. *Illinois Bell Telephone Co.*, 270 U. S. 587, 592.[14] In those cases the consumers are deprived of their conventional right to bargain for lower prices; to do so in the face of the order would at least involve an effort to induce violation of the law by the sellers. In the present case, on the contrary, there is no legal inhibition whatever operating against the producers, since they and the handlers are free to contract at higher prices.

C. THE AGRICULTURAL MARKETING AGREEMENT ACT OF 1937 CONFERS UPON PETITIONERS NO RIGHT TO PROCEED AGAINST THE SECRETARY OF AGRICULTURE TO OBTAIN JUDICIAL REVIEW OF THE VALIDITY OF HIS ADMINISTRATIVE ACTION UNDER THE STATUTE

Petitioners contend that even if, under general principles, no legal right of theirs has been invaded, privileges conferred upon them by the Agricultural Marketing Agreement Act of 1937 furnish sufficient foundation for their present suit. This is so, however, only if Congress intended not

[14] *Associated Industries, Inc.* v. *Ickes*, 134 F. (2d) 694 (C. C. A. 2), remanded on question of mootness, No. 61, present Term, presented the question whether the statutory right of appeal conferred on "aggrieved parties" to contest a minimum-price order extended to an association of consumers.

only that producers of agricultural commodities should derive the benefits accruing to them from the operation of this statute but also that these producers should be given the right to obtain judicial review of the validity of marketing orders issued thereunder. Since no language in the statute can be construed as conferring this right, it is granted only if consideration of the entire structure and purpose of the statute requires the implication of such a grant.

This Court has recently passed upon an analogous question of legislative intent in a group of cases involving the Railway Labor Act.[15] In those cases the plaintiffs' standing to sue was beyond question. The Railway Labor Act confers upon railroad employees the right to bargain collectively through representatives of their own choosing and the statute makes this right enforceable by legal proceedings against private persons who interfere with exercise of the right.[16] This Court held that Congress, in enacting the Railway Labor Act, intended to deprive the courts of jurisdiction to review the validity of the ad-

[15] *Switchmen's Union of North America* v. *National Mediation Board*, No. 48, this Term; *General Committee of Adjustment of the Brotherhood of Locomotive Engineers* v. *Southern Pacific Co.*, Nos. 27 and 41, this Term; *General Committee of Adjustment of the Brotherhood of Locomotive Engineers* v. *Missouri-Kansas-Texas R. R. Co.*, No. 23, this Term; all decided November 22, 1943.

[16] *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515; *Texas & N. O. R. R. Co.* v. *Brotherhood of Ry. & Steamship Clerks*, 281 U. S. 548.

ministrative determinations of the National Mediation Board and that, in a suit to obtain cancellation of such a determination, on the ground that it rested upon an erroneous interpretation of the statute, the Board's determination was conclusive. Since the Railway Labor Act did not expressly deny to the courts jurisdiction over controversies growing out of administrative decisions of the Board, the conclusion that the Act denied the courts jurisdiction was a matter of inference based upon the type of problem involved and the history, structure, and objectives of the statute.

This conclusion that a statute, by implication, denied jurisdiction to the courts respecting essential elements of an otherwise legally enforceable right, involved greater difficulty than the conclusion that the present statute does not grant, by implication, to those who may benefit from its operation the right to obtain judicial review of its administration.

Decisions defining the limits of a shipper's right to maintain a suit to set aside an order of the Interstate Commerce Commission indicate the reluctance of this Court to subject administrative orders to judicial review where no legal right of the plaintiff has been invaded.[17] In the *Chi-*

[17] A shipper may maintain such a suit if the Commission's order relates to a right given to shippers by the Interstate Commerce Commission Act, but if this is not the case the shipper is without standing to sue although the order adversely affects his economic interests and although he had been a party to the administrative proceeding leading to

cago Junction Case, 264 U. S. 258, cited by petitioners, the carriers' right to maintain the suit rested upon the fact that the Interstate Commerce Act conferred upon them a right to equal treatment with respect to terminal facilities and also upon statutory provisions deemed to confer the right to obtain judicial review of the order involved. See discussion of this case in *Alexander Sprunt & Son, Inc.* v. *United States*, 281 U. S. 249, 257, and in *Alabama Power Co.* v. *Ickes*, 302 U. S. 464, 483–484.

Examination of the provisions of the Agricultural Marketing Agreement Act of 1937 leads to the conclusion that it does not impliedly confer upon producers the privilege of obtaining judicial review of the Secretary's marketing orders. In the first place, the statute expressly provides (Sec. 8c(15), R. 41) for judicial review of action of administrative officials in applying the statute, but it confines the remedy to handlers. When Congress thus granted to a specified class the right to obtain judicial review of administrative determinations but omitted any such provision as to others who might be affected by such determinations, it thereby "drew a plain line of distinction"; the distinction is not to be deemed "inadvertent"; and the "selective manner" of providing judicial re-

issuance of the order. *Alexander Sprunt & Son, Inc.* v. *United States*, 281 U. S. 249, 254–257; *Edward Hines Trustees* v. *United States*, 263 U. S. 143, 148; *United States* v. *Merchants & Manufacturers Traffic Assn.*, 242 U. S. 178, 188.

view leads to the conclusion that no such review was intended apart from that for which Congress made express provision. See *Switchmen's Union of North America* v. *National Mediation Board*, No. 48, this Term. Moreover, such judicial review is to be preceded by administrative review (sec. 8c (15), R. 41). This pattern is significant in determining whether others, without recourse to the administrative remedy and with no conventional legal interest to be protected, were meant to be authorized to sue for an injunction. Cf. *Singer & Sons* v. *Union Pac. R. Co.*, 311 U. S. 295. And it is specifically provided (sec. 8c (15) (B), R. 41) that the pendency of proceedings brought by handlers shall not impede, hinder, or delay the Secretary or the United States from obtaining relief pursuant to section 8a (6) of the Act. The latter section provides for suits to enforce compliance (R. 32). Thus handlers, whose legal interests are affected by the orders, may contest such orders but may not escape compliance, under the statutory plan. See *Lockerty* v. *Phillips*, 319 U. S. 182. It would be highly unreal to suppose that Congress meant to confer greater litigious rights on producers, who are not mentioned in relation to judicial review and who are under no legal compulsions and therefore not subject to compliance suits, but who could tie up the operation of an order if permitted to maintain injunctive suits. The report of the House Committee on Agriculture on the bill which became the

Agricultural Marketing Agreement Act of 1937 clearly indicates that Congress did not intend this result (H. Rep. No. 1241, 74th Cong., 1st Sess., p. 14).

In the second place, the issuance of a marketing order by the Secretary of Agriculture is contingent upon an exercise by him of discretionary authority which plainly is beyond the bounds of judicial review.[18] Since the receipt by producers of any benefits whatsoever is made dependent upon a nonreviewable exercise of administrative discretion, Congress is not to be presumed to have granted to producers the right to subject the particular provisions of marketing orders to judicial review.

In the third place, if maintenance of the present action is a right conferred by the statute, then any producer is entitled to judicial review of every provision of a marketing order which enters into the computation of the uniform price payable to producers. In the case of Order No. 4 there could thus be brought under attack the class prices for milk fixed by Section 904.4—the most important factor in the computation—as well as at least six

[18] Section 8c (4) provides that the Secretary shall issue a marketing order if he finds, after notice and opportunity for hearing, that the issuance of an order as to a particular agricultural commodity "will tend to effectuate the declared policy" of the statute with respect to such commodity (R. 34).

other factors.[19] We submit that Congress never intended to confer upon producers the right to make such a broad-scale attack upon marketing orders, which would constitute a serious threat to efficient and orderly administration.

Finally, the Agricultural Marketing Agreement Act of 1937 contains certain safeguards designed in the interest of producers. It authorizes the Secretary to issue a marketing order only if he finds that the order is approved by two-thirds of the producers (in number or in volume of production) in the production area covered by the order (Sec. 8c (8), (9); R. 38–39).[20] The Secretary is also required to terminate an order if he finds that termination is favored by a majority of the producers in the production area (Sec. 8c (16) (B), R. 41). These provisions indicate that Congress believed that the interests of producers were sufficiently safeguarded by assuring that marketing orders have the over-all approval of the affected producers.

Petitioners urge that under the holding in *United States* v. *Rock Royal Cooperative, Inc.*, 307 U. S. 533, 560–561, handlers cannot obtain judicial review of the provisions of the order authorizing

[19] Sec. 904.7b (2)–(7). The six other factors include the deduction for payments to cooperatives. Some of the factors are additions, but an insufficient addition has the same effect in lowering uniform price as a deduction.

[20] Producers are likewise entitled to participate in the hearing which the Secretary is required to hold before issuing a marketing order (Sec. 8c (3); R. 34).

payments to cooperatives [21] and therefore, if producers are not entitled to review of these provisions, they will not be subject to any judicial review. "All constitutional questions aside, it is for Congress to determine how the rights which it creates shall be enforced" (*Switchmen's Union of North America* v. *National Mediation Board*, *supra*). *A fortiori* this is so when it is a question, as here, not of "rights" created by Congress but of possible benefits flowing from the operation of a federal statute.

The dearth of authority for the proposition that a legal right which gives standing to sue to protect the right may be "founded on a statute which confers a privilege" at least indicates that only rarely have statutes conferred such a right. Of the cases cited in *Tennessee Power Co.* v. *Tennessee Valley Authority*, 306 U. S. 118, at p. 138, only *American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94, involved such a statutory privilege. In that case a postmaster, on instruc-

[21] In the *Rock Royal* case the United States brought suit to require certain handlers to comply with a milk order issued by the Secretary of Agriculture and the invalidity of certain provisions of the order was among the defenses set up. The Court's holding that handlers could not raise the issue of the validity of a deduction made in computing uniform price is not necessarily conclusive on the question of their right to obtain judicial review of the validity of the deduction in a proceeding begun before the Secretary of Agriculture under Section 8c (15) of the statute. See *Federal Communications Commission* v. *Sanders Radio Station*, 309 U. S. 470, 476–477.

tions from the Postmaster General, returned to the senders all mail addressed to the plaintiffs and stamped the mail with the word "fraudulent." In a suit against the local postmaster a complaint setting forth these facts and that the defendant's acts were not authorized by any federal statute was held to state a valid cause of action. This Court said (p. 110) that the plaintiffs "had the legal right under the general acts of Congress relating to the mails" to have letters addressed to them delivered and that the alleged unauthorized conduct would greatly injure if not wholly destroy the plaintiffs' business. Since the postal system is a governmental monopoly of a necessity of life, the implication was compelling that Congress had conferred upon the ordinary citizen standing to protect his use of the mails against improper interference.

We are not dealing here with a privilege of that kind, but with a claim to greater benefits than those to which the administrator of the statute deems the plaintiff to be entitled. Nor are we dealing with duties which are so plain that they might be termed ministerial, and which might be the subject of mandamus proceedings—the duty, for example, to hold hearings. We are dealing with an exercise of judgment in the administration of a highly complex statute, and an attempt to secure through judicial intervention somewhat greater benefits than those which the administration of the

statute is bringing to the plaintiffs. It is submitted that the statute does not support such an attempt.

CONCLUSION

It is respectfully submitted that the judgment of the court below should be affirmed.

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